MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2016/2017

UPS2612 – EVIDENCE AND PROCEDURE IN SYARIAH COURTS

(All Sections / Groups)

20 OCTOBER 2016
Reading Time : 2.30 PM. – 2.45 PM.
(15 Minutes)
Answering Time: 2.45 PM. – 5.45 PM.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 3 pages with 5 Questions only.

3. Attempt **FOUR** out of FIVE questions. Question One (1) is **COMPULSORY** to be answered. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into Examination Hall CLEAN and ORIGINAL copy of:
   i. Syariah Court Evidence (Federal Territories) Act 1997 [Act 561]; and
   ii. Syariah Criminal Procedure (Federal Territories) Act 1997 [Act 560];
   iii. Syariah Criminal Offences (Federal Territories) Act 1997 [Act 559];
   iv. Syariah Court Civil Procedure (Federal Territories) Act 1997 [Act 585]; and
   v. Translation of Al-Quran

   Students are not allowed to lend or borrow statute(s) and/or Translation of Al-Quran during the Examination.

5. Please write all your answers in the Answer Booklet provided.

Question 1(COMPULSORY)

Abu was an adopted son to Datin Aida. Before Datin Aida died, she made a *hibah* (intervivos gift) witnessed by her employees, Mak Ijah and Pak Ali that she willingly gives Abu all her shares in Syarikat Ria so that Abu can become the Chairman of the company. Three days after making such *hibah*, Datin Aida passed away and Dato' Hussin, as Datin Aida's husband, applied for *faraid* certificate from the Syariah High Court to administer her estate.

Dato' Hussin claimed that Datin Aida had died intestate and all her shares in Syarikat Ria has been transferred to him three weeks before her demised. His claim was supported by Mr Lau, the company's legal adviser.

At the same time, Abu had filed an application to claim the *hibah* made by Datin Aida. Abu intended to call Mak Ijah and Pak Ali to become his witnesses. He also want to tender a video recording from CCTV that shows the event where Datin Aida expressed her wishes to transfer all her shares to Abu. The video recording has been certified authentic by the CCTV's company and the audio-visual quality of the recording was in high definition (HD).

Based on the principles of Islamic law of evidence, examine the admissibility of all the available evidences and decide whether Abu's claim can succeed.

(Total 25 marks)

Question 2

Man was caught in front of a night club in Kuala Lumpur by two Religious Enforcement Officers. The Officers found that there was a strong smell of liquor coming out from Man's mouth. When asked, Man confessed that he had drink 3 cans of Tiger Beer. Man was then charged for consumption of intoxicating drink under section 19 of Syariah Criminal Offences (Federal Territories) Act 1997 but he pleaded not guilty when the charge was read to him in the Syariah Subordinate Court.

1) Explain the procedure on how the Syariah Subordinate court should try his case until the case is disposes.

(15 marks)

2) Determine whether Man's confession in the above case is admissible under the Islamic law of evidence.

(10 marks)

(Total 25 marks)

Continued .....

Question 3

Ali had brought a claim against Ahmad in the Syariah Subordinate Court of Kuala Lumpur to recover the arrears of debt owed by Ahmad to Ali. Ali had subpoenaed two witnesses but only one witness testified. Since there was no other evidence can be tendered by Ali, the Syari'e Judge ordered Ahmad to take an oath denying the claim. Ahmad refused to do so and as a result, the Syari'e Judge ordered Ali to take the returned oath. After Ali took the oath, the Syari'e Judge allowed Ali's claim and ordered Ahmad to pay the amount demanded by Ali.

Based on the above:

1) Explain the types of oath and determine whether the Syari'e Judge can allow Ali's claim based on the returned oath.

(15 marks)

2) Briefly describe the standard of proof required under the Islamic law of evidence with emphasis on the above case. Support your answer with relevant authorities.

(10 marks)

(Total 25 Marks)

Question 4

Section 3(1) of the Syariah Court Evidence (Federal Territories) Act 1997 provides:

> "evidence" includes-
> (a) *bayyinah* and *syahadah;*
> (b) all statements …;
> (c) all documents produced for the inspection of the Court: such documents are called documentary evidence;

In the light of the above provision:

1) Discuss the legality and admissibility of documentary evidence under Islamic law of evidence and Syariah Court Evidence (Federal Territories) Act 1997.

(15 marks)

2) Describe and distinguish the concept of *bayyinah* and *syahadah* from juristic point of view.

(10 marks)

(Total 25 Marks)

Continued …….

Question 5

Aishah is working in Kuala Lumpur while her husband Azman is working and staying in Shah Alam. One day, Aishah received news that Azman had been caught for close proximity (*khalwat*) and the woman was actually his second wife. Aishah felt very frustrated and she decided to ask for divorce from Azman through the Syariah court on the basis of *fasakh.*

Advise Sarah on the following:

1) How to commence her action until the service of document.

(15 marks)

2) In case that Azman refuse to appear before the Syariah court, whether the Syari'e judge can proceed to hear the case in his absence.

(10 marks)

(Total 25 Marks)

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